109-216

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~303~~ 58

SALMON S. MATTHEWS, PLAINTIFF IN ERROR,

vs.

THADDEUS DENSMORE, ELISHA P. GROW, AND DEWITT GROW.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

FILED OCTOBER 5, 1880.

" and if it appears as a mortgage in favor of the bank, it
" should be cancelled and erased, so far as the bank is con-
" cerned, under the judgment making the rule absolute.
" Our conclusion is that all the mortgage rights which the
" Bank of New Orleans had with respect to the property in
" question have long since been extinguished, and the judg-
" ment appealed from is therefore affirmed, with costs."

Adams *vs.* Daunis, 29 La. Ann., 325, (Rec., p. 30.)

A mortgage not recorded in the parish where the property is to be affected is situated is utterly null and void, except between the parties *thereto*.

Adams *vs.* Daunis, 29 La. Ann., 323, (Rec., p. 29.)

We pray that the judgment be affirmed, with costs.
All of which is respectfully submitted.

JOSEPH P. HORNOR,
W. S. BENEDICT,
Of Counsel.

WASHINGTON, D. C., 24*th October*, 1883.

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1 SALMAN S. MATTHEWS, PL'T'FF IN ERROR,
vs.
THADDEUS DENSMORE, ELISHA P. GROW, & DEWITT GROW, def'ts in error.

I, Ed. W. Lowe, deputy clerk of the supreme court of the State of Michigan, do hereby certify that the foregoing are true and compared copies of all papers filed in this court in said cause. That I have compared the same with the original papers on file in this office, and that they are true transcripts therefrom and the whole of such originals.

In witness whereof I have hereunto set my hand and affixed the seal of the supreme court, at Lansing, this 21st day of September, 1880.

[SEAL.] ED. W. LOWE, *Deputy Clerk.*

2 *Writ of error.*

The people of the State of Michigan to the judge of our circuit court in and for the county of Ingham, greeting:

[L. S.] Because in the record and proceedings, and also in the giving of judgment, in a plaint which was in our circuit court before you, between Thaddeus Densmore, Elisha P. Grow, and Dewitt Grow, plaintiffs, and Salmon S. Mathews, defendant, in a plea of trespass on the case, manifest error hath intervened to the great damage of the said defendant, as by his complaint we are informed: We, being willing that the error, if any there be, should in due manner be corrected and full and speedy justice done to the parties aforesaid and in this behalf, do command you that if judgment be thereupon given, then you send to our justices of our supreme court of jurisdiction, distinctly and openly upon your seal, the record and proceedings of the plaint aforesaid, with all things concerning the same, and this writ, so that they may have them at the court-house in the city of Lansing, on the twenty-eighth day of February inst., that, the record and proceedings aforesaid being inspected, we may cause to be further done thereupon for correcting that error what of right and according to law and custom of the State of Michigan ought to be done.

Witness the honorable Isaac Marston, chief justice of our supreme court, at Lansing, this sixth day of February, in the year of our Lord one thousand eight hundred and eighty.

CLAUDE C. WALKER,
Clerk of the Supreme Court.
ED. W. LOWE, *Deputy Clerk.*

To the supreme court of the State of Michigan:

The execution of the within writ appears by the transcript of record hereto annexed.

, 18 . , clerk. , deputy clerk.

(Indorsed:) No. . Supreme court of the State of Michigan.
, pl'ff in error, vs. , def't in error. Writ of error.
Filed in the supreme court , 18 . , clerk.
att'y for pl'ff in error.

12356——1

3 *Judgment below affirmed.* (*Law.*)

At a session of the supreme court of the State of Michigan, held at the supreme court-room in the city of Lansing, on the 30th day of April, in the year one thousand eight hundred and eighty.

Present, the honorable Isaac Marston, chief justice; Benjamin F. Graves, Thomas M. Cooley, James V. Campbell, associate justices.

SALMON S. MATTHEWS, PL'T'FF IN ERROR,
vs.
THADDEUS DENSMORE, ELISHA P. GROW, AND Dewitt Grow, def'ts in error. } No. 5008.

The record and proceedings in this cause having been removed to this court by a writ of error, issued to the circuit court for the county of Ingham, and the same and the matters in error assigned having been seen and inspected and duly considered by the court, and it appearing to this court that in said record and proceedings and in the giving of judgment in said circuit court there is no error, therefore it is ordered and adjudged that the judgment of said circuit court for the county of Ingham be, and the same is hereby, in all things affirmed, and that the defendants in error do recover of the plaintiff in error their costs of suit, to be taxed, and that they have execution therefor.

STATE OF MICHIGAN, *ss:*

I, Ed. W. Lowe, deputy clerk of the supreme court of the State of Michigan, at Lansing, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this 21st day of Sept., in the year of our Lord one thousand eight hundred and eighty.

[SEAL.] ED. W. LOWE,
Deputy Clerk of the Supreme Court.

4 In Supreme Court.

SALMON S. MATHEWS
v.
THADDEUS DENSMORE, ELISHA P. GROW, & Dewitt Grow.

Plaintiff in error is marshal of the United States for the eastern district of Michigan, & as such levied an attachment issuing out of the United States circuit court for that district upon a stock of goods in possession of the defendants in error. The plaintiff in the attachment composed the firm of Simonds, Hatch & Whitten, & the defendants the firm of Gates & Marler. Before the attachment was served, Densmore, by virtue of one chattel mortgage given by Gates & Marler, & Elisha P. & Dewitt Grow, by virtue of another, had jointly taken possession of the stock of goods,

& were then in possession & making sale of them. When the marshal seized the goods & dispossessed them they brought suit in trespass. The marshal justified under his attachment. On the trial the attachment was held to be void, for fatal defects in the affidavit on which it issued, & the plaintiff had judgment.

The record in error presents only the one question: Whether
5 the court was right in ruling out the officer's justification. In this court scarcely an attempt has been made to support the affidavit. The statute under which the writ was taken out requires the plaintiff or some one in his behalf to make affidavit of the amount owing to him from the defendant over and above all set-offs, & that the same is due. (Comp. L., § 6398.) The defect in the affidavit in this case was that it did not aver that the debt was due (copy writ). The affidavit might be true & yet no right of action have accrued upon it. (Cion v. McMahen, 17 Mich., 571; Wells v. Parber, H. Mich., 102.) As this proceeding is extraordinary & depends wholly upon the statute, the failure to follow the statute in this important particular was correctly held to render the affidavit nugatory.

It is nevertheless urged on behalf of the marshal that, though the affidavit was defective, his writ was fair upon its face, & was therefore a complete protection to him, on the familiar principle that an officer is justified in obeying any process which appears to be lawfully issued to him, & which on its face apprises him of no legal reason why he should refrain from doing so. (Erskene v. Holmbach, 14 Wall., 613; Bird v. Perkins, 33 Mich., 28; Walson v. Watson, 9 Com., 140; Lott v. Hubbard,
6 44 Ala., 593; Hill v. Tigley, 25 Ill., 156; Seekins v. Goodale, 61 Me., 400; Underwood v. Robinson, 106 Mass., 296; Malden v. Dudley, 49 Me., 419; Gore v. Gorden, 66 N. C., 371.) And no doubt the writ in this case must be regarded as fair on its face. Under the general law relating to attachments, where the suit is begun by that writ, the affidavit is attached to & in legal effect be*cause* a part of it; & if then the affidavit is void the writ is void also. But under an amendatory statute passed in 1867, which permits the issue of the writ in pending suits, the affidavit is filed with the clerk, & the officer to whom the writ is issued is supposed to know nothing of it. (Comp. L., § 643.) It was under the amendatory statute that the writ in this case was issued, & an inspection of its provisions shows that the writ contains all the recitals that the statute requires. (Comp. L., § 6434.)

But the principle which is appealed to has no application to a case of this description. The marshal in this case is not seeking to defend himself under his writ; he is endeavoring to assail the title of others. He has not seized goods in the hands of Gates & Marler, & confessedly owned by them, but he has taken goods away from Densmore & the Grows
7 to which they assert a title as mortgagees, & is seeking to hold them on the alleged ground that by virtue of a writ against Gates & Marler, in favor of certain of their creditors, he is in position to contest the right set up by the mortgagees. Now, if in point of fact he has a valid writ of the kind he claims, the marshal, representing the creditors, is in position to attack the mortgages; but if he has no such writ it is no concern of his whether the mortgages are valid or not. The first step in his justification is therefore to show not a writ merely but a valid writ, & there can be no valid writ of attachment without a sufficient affidavit.

(Earl v. Camp, 16 Wend., 562; Parker v. Walrod, 16 Wend., 514, 517; Spafford v. Beach, 1 Doug., Mich., 199; Leroy v. East Saginaw, 18 Mich., 235; Wolkins v. Wallace, 19 Mich., 57, 74.) The marshal understood this, & endeavored to satisfy the rule by producing a certified copy of the affidavit. Unfortunately the evidence defeated the justification instead of supporting it.

The circuit court decided correctly in holding that no ground had been shown for interfering with the possession of the mortgages, & the judgment must be affirmed with costs.

T. M. COOLEY.
ISAAC MARSTON.
B. F. GRAVES.
J. V. CAMPBELL.

8 STATE OF MICHIGAN:

The circuit court for the county of Ingham.

THADDEUS DENSMORE, ELISHA P. GROW, AND Dewitt Grow
vs.
SALMON S. MATHEWS.

COUNTY OF INGHAM, *ss:*

I, Claude C. Walker, clerk of the county and court aforesaid, do hereby certify that the above and foregoing is a true and compared copy of the original declaration, plea, and other papers filed in this cause, and of the rules and final judgment entered therein on the 21st day of October, A. D. 1879, and the whole of said cause remaining of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of the court this 28th day of February, A D. 1880.

[SEAL.] C. C. WALKER, *Clerk.*

9 At a general term of the circuit court for the county of Ingham continued and held at the court-house in the city of Mason, in said county, on the 17th day of February, A. D. 1880.

Present, Hon. Geo. M. Huntington, circuit judge.

THADDEUS DENSMORE, ELISHA P. GROW, & Dewitt Grow
vs.
SALMON S. MATHEWS.

The jury by whom the issue joined in this cause was tried having rendered a verdict therein in favor of the plaintiffs & against the defendant, and that they assess the damages of the said plaintiffs on occasion of the premises, over and above their costs and charges by them about their suit in this behalf expended, at the sum of eight hundred and sixty-six dollars and fifty-four cents: Therefore, on motion of H. P. Henderson, attorney for the said plaintiffs, it is ordered and adjudged by the court now here that the said plaintiffs do recover against the said defendant their damages aforesaid, together with their costs and charges aforesaid to be taxed,

and that the said plaintiffs have execution therefor; and it further
10 appearing to this court that the verdict in this cause was rendered on the 21st day of October, 1879, and that the clerk of this court was on that day directed by this court to enter judgment therein, and that by inadvertance of the said clerk said judgment was not entered, and on reading and filing the stipulation of the parties by their respective attorneys consenting thereto, it is further ordered and adjudged that this judgment be, and the same is hereby, entered as of the 21st day of October, A. D. 1879, and shall have the same force and effect in all respects as though entered at the date aforesaid.

GEO. M. HUNTINGTON,
Circuit Judge.

11 STATE OF MICHIGAN:

The circuit court for the county of Ingham.

THADDEUS DENSMORE, ELISHA P. GROW, & DEWITT GROW
vs.
SALMON S. MATHEWS.

In this cause it is hereby stipulated by and between the parties, by their respective attorneys, that on Tuesday, February 17th, 1880, judgment may be rendered by said court upon the verdict heretofore entered in this cause, and that said judgment may be entered as of the 21st day of October, A. D. 1879, that being the day of the trial of said cause in this court, and the judgment so entered shall stand as and have the same force & effect as though the same had been properly entered on the said 21st day of October, A. D. 1879, and the entry thereof omitted by the clerk by mistake.

Dated February 11th, 1880.

H. P. HENDERSON,
Att'y for Pl'ffs.
J. G. DICKINSON,
Attorney for Def't.

12 Know all men by these presents that we, Salmon S. Mathews, of the city of Detroit, Michigan, as principal, and Stephen B. Simons, Cornelius P. Hatch, and Henry C. Whitten, of the city of Boston, State of Massachusetts, and C. R. Mabley, of the city of Detroit, Mich., as sureties, are held and firmly bound unto Thaddeus Densmore, Elisha P. Grow, and Dewitt Grow in the sum of two thousand dollars, lawful money, to be paid to the said Thaddeus Densmore, Elisha P. Grow, and Dewitt Grow, their executors, administrators, or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 17th day of February, A. D. 1889.

Whereas judgment has been rendered in the circuit court for the county of Ingham in favor of the said Thaddeus Densmore, Elisha P. Grow, and Dewitt Grow against the said Salmon S. Mathews for the sum of nine hundred forty-two $\frac{64}{100}$ dollars, damages and costs, in which judgment and proceedings the said Salmon S. Mathews complains that there is error in

substance, and to be released therefrom hath obtained a writ of
13 error to remove the same to the supreme court, to the end that the errors therein may be corrected:

Now, therefore, the condition of this obligation is such that if the said Salmon S. Mathews shall prosecute his writ of error to effect, and shall pay and satisfy such judgment as shall be rendered against him upon the said writ of error in the said supreme court, then this obligation to be void; otherwise to remain in full force and virtue.

SALMON S. MATHEWS. [L. S.]
STEPHEN B. SIMONS. [L. S.]
CORNELIUS P. HATCH. [L. S.]
HENRY C. WHITTEN. [L. S.]
C. R. MABLEY. [L. S.]

I hereby approve the above bond and the sureties therein, and direct the same to stand as sufficient.

JAMES V. CAMPBELL,
Associate Justice of the Supreme Court of Michigan.

14 Circuit court for the county of Ingham.

SALMON S. MATHEWS
ads.
THADDEUS DENSMORE, ELISHA P. GROW, AND
Dewitt Grow.

In this cause it is stipulated that defendant may have to and including the 4th day of February, A. D. 1880, in which to prepare or file bill of exceptions.

Dated October 21st, 1879.

J. G. DICKINSON,
Attorney for Defendant.
H. P. HENDERSON,
Attorney for Pl'ffs.

15 The circuit court for the county of Ingham.

SALMON S. MATHEWS
ads.
THADDEUS DENSMORE, ELISHA P. GROW, AND
Dewitt Grow.

At a session of said court held at the court-house in the city of Mason, in said county of Ingham, on the 21st day of October, A. D. 1879, before the honorable George M. Huntington, judge of said circuit court, the issue joined between the parties in this cause came on to be tried by a jury of said county of Ingham for that purpose duly empannelled, good and lawful men of the said county, at which day came there as well the said plaintiffs as the said defendant, by their respective attorneys; and the jurors of the aforesaid empannelled to try the said issue, also came and were then and there duly chosen and sworn to try the issue aforesaid between the parties aforesaid.

And upon the trial of the issue aforesaid the counsel for the said plaintiffs, to maintain and prove the said issue on their part, called THADDEUS DENSMORE, one of the plaintiffs. He testified as follows on the direct examination:

16 I recollect the circumstance of Mathews, the United States marshal, the defendant in this case, coming to Dansville and making seizure of some goods there.

Ques. At that time who was in possession of those goods?

Ans. Grow Brothers and myself.

Ques. State what Grows' names are.

Ans. Elisha P. and Dewitt.

Witness further stated:

I think it was the second day of January we took possession of the goods. The marshal was there two days, the 16th and 17th of January. He then seized and took possession of the goods mentioned in the inventory shown to witness. (Witness was here shown a copy of the appraisal made by the appraisers appointed by the defendant when he seized the goods. They are the same as are set forth in the declaration.) He boxed them up and took them away.

Witness also testified as to value, that in his opinion the goods were worth $820.44, and that the goods in the inventory are the same as set out in the declaration.

He was cross-examined, and says: Elisha P. Grow was there that day, but not Dewitt Grow. I did not remain there all the time from the second day of January, but I think Elisha P. Grow did; I was there part

17 of the time. I was there the day the marshal seized the goods. The goods were turned over to us on the 2nd of January by Mr. Gates. They were turned over to us on the mortgage which we previously had.

(The mortgages were produced by plaintiff's counsel at the request of defendants' counsel, and read in evidence. Copies are hereto annexed. They are marked exhibits "A" & "B." Execution and due filing were admitted.)

Witness continued: We took possession together; we agreed that we would take the stock together, and in dividing up the sales that Grow was to have two-fifths, and I three-fifths of the avails of the goods. I put a man there named Beardsley to represent me. Grow Brothers put a man there named Stone to represent them. The arrangement between Grow Brothers and me to take possession was made in a room over the store where Gates was living. There was no writing made.

Direct examination was resumed. Witness said: Prior to the time the marshal came there bills had been gotten out headed, "Great closing out mortgage sale." They were signed G. Densmore and Grow Brothers, mortgagees.

18 (Handbills were introduced and read. A copy is attached marked "Exhibit C.")

ELISHA P. GROW, another of the plaintiffs, testified as follows:

I reside at Bay City, am one of the firm of Grow Brothers. Know Frank Gates, know Densmore. My brother's name is Dewitt. Have

known Mathews, the United States marshal, ten years. Remember the seizure by the marshal.

Ques. At the time and just prior to the seizure who was in possession of the goods mentioned in the inventory?

Ans. Mr. Densmore and Grow Brothers. They had been in possession about two weeks. The seizure was the 16th and 17th of January, and before the commencement of this suit. I had stayed there a couple of weeks, and had made arrangement with the owner of the building that the goods were in for the rent. The arrangement I made was for Densmore and Grow Brothers, and for as long as we wished it.

He further testified that the goods were worth $820.44; that the seizure by defendant was at Dansville, in this county.

He was cross-examined; he testified as follows:

The possession that I had was the possession that was taken by
19 Densmore and the Grow Brothers together. It was taken under the mortgages by both together at the same time. I knew about the bills being out. In the division of the proceeds of the sales of the goods, it was agreed that Grow Brothers were to have two-fifths and Densmore three-fifths. We had been selling at retail before the marshal came. The only notice we gave of the mortgage sale was the bills, a copy of which has been read, except that I think there were some locals in the newspaper. We began making sales on the 2nd day of January, the day we took possession. All the proceeds that came into the concern after the second day of January was subject to be divided between Densmore and ourselves under the agreement between us. The claim of Grow Brothers was against Frank Gates individually, and not against the firm of Gates and Marler. That Gates did not assist in making any sales before the seizure by defendant; that Densmore and Grow Brothers commenced selling at retail from the stock on the second day of January, the day they took possession, and were engaged in doing so at the time of the seizure by defendant, and continued to do so afterwards of the goods that were left. It was agreed be-
20 tween Densmore and Grow Brothers that the sales should be divided between us, Densmore receiving three-fifths and we two-fifths. The firm of Grow Brothers never sold Gates and Marler any goods. They sold some of the goods that were seized by the marshal to Frank Gates individually, and not to Gates and Marler.

Plaintiff also introduced in evidence a copy of the appraisal of the goods mentioned in the plaintiff's declaration, made by Levi Geer and Egbert Rice, which said copy was endorced as follows:

"I hereby certify that the foregoing is a true copy of an appraisal made by Levi Geer and Egbert Rice on the 16th and 17th day of January, 1879, they being duly sworn by me.

S. S. MATHEWS.

Which signature to said certificate was admitted by defendant's counsel to be the defendant's signature; which said inventory was headed "Appraisal of goods seized by U. S. marshal at Dansville, M., Jan. 16th & 17th, 1879."

Plaintiff recalled ELISHA P. GROW, who testified that the said inventory in the aggregate amounted to $820.44, and that the goods were worth that amount; that the interest on that amount, from Jan. 17th, 1879, to this time, was $46.10, making in the aggregate $866.54.

21 He was cross-examined and testified that he had footed the inventory himself; that the amount above given was correct; that he knew the value of these goods; that this inventory was less than their real value; that he knew at what rate the goods were sold for; that Densmore & Grow Bros. sold out of that stock after such seizure, and that they got more than these goods were figured at in this inventory.

Plaintiffs rested.

On the part of the defence testimony was introduced as follows:

It was agreed between counsel that defendant was the United States marshal for the eastern district of Michigan.

Paper writing was offered in evidence. It is hereto annexed and marked "Exhibit D."

It was admitted that Addison Mandell was the clerk of the circuit court of the United States for the eastern district of Michigan; that the signature to Exhibit D was his; and it was consented by plaintiff's counsel that the only objections to be taken to the introduction of the papers in evidence should be the same as if the clerk himself were upon the stand with the paper.

Plaintiff's counsel then stated his objections to the introduction of the paper as follows:

22 1st. The affidavit does not allege or show that any sum whatever is due.

2nd. That the affidavit does not show that there is the sum of one hundred dollars due over and above all set-off.

3rd. The affidavit does not show that there was five hundred dollars due over and above all set-off.

4th. The writ does not recite the commencement of suit.

5th. There is no proof of the commencement of suit.

6th. There is no command in the writ to summon the defendants or either of them.

And thereupon the said circuit judge declared and delivered his opinion that said paper writing was inadmissible, and rejected the same, to which opinion and decision of the said circuit judge the said counsel for said defendant did then and there on behalf of said defendant except.

Mr. Grow was recalled, and testified: I knew Frank Gates, and I knew Marler. I don't know that they ever bought goods in their partnership name.

Mr. GROW was called as a witness for the defendant.

Ques. You knew Mr. Gates, did you?

Ans. Yes, sir.

Ques. Did you know this man Marler?

Ans. Yes, sir.

Ques. That has been spoken of by Mr. Dickinson?

23 Ans. Yes, sir.

Ques. Do you know whether Gates & Marler were, at any time, engaged in business at Dansville?

Ans. I don't know that they were; no, sir.

Ques. Don't you know that they formed a copartnership at some time?

Ans. No, sir.

Ques. You don't know that?

Ans. No, sir; I know they didn't.

Ques. Don't you know that they bought goods in their partnership name?

Ans. I don't know that they had.

Cross-examination by Mr. HENDERSON:

Ques. Did you ever know a man by the name of Thomas Maler?

Ans. I didn't.

Ques. Never knew such a man?

Ans. No, sir.

Mr. CONELY. Wasn't that the man I asked about?

Mr. HENDERSON. Yes. I want it to appear in testimony, and the offer is that they have made—that the writ they offered and all the proceedings they offered are against Frank Gates and Thos. Marler.

Ques. What was Marler's name?

Ans. Horace Marler.

Ques. Is that the only man you ever knew by the name of Marler?

Ans. Yes, sir.

24 Mr. CONELY. Did you ever see this man, Horace Marler, to talk with him?

Ans. Yes, sir.

EDWARD J. H. ESTERBROOK was *shown* for the defence:

I know Frank Gates and have seen Marler. I am and was the agent of Simons, Hatch & Whitten, of Boston. I took an order for goods from Gates & Marler. I took the order at Bay City. It was for men's furnishing goods. The goods were shipped to Gates & Marler. They amounted to about five hundred dollars. They were shipped to Dansville.

He was cross-examined:

The bill of goods sold were shown witness, amounting to $452.90, dated on the 4th day of October, 1878, and witness testified respecting them that they were the bills of all the goods sold by Simons, Hatch & Whitten to Gates & Marler, and that the amount was $452.90.

EGBERT RICE was sworn for defence. He testified as follows:

I reside at Dansville; have lived there about eighteen years. Am acquainted with Frank Gates.

Ques. Did you know of his entering into partnership, a partnership of Gates & Marler in October, 1878?

25 Ans. It was a current report that he had entered into such a partnership with Gates; no other way.

Marler was never at Dansville to do business to my knowledge. I never saw any sign up to the name of Gates & Marler, but handbills were thrown out with their names on.

He testified further as to the value of the goods.

Dr. C. L. RANDALL was sworn as to value, and testified that he knew the stock of goods from which these goods were taken. After these goods were taken from it, I sold some of the remainder of them for Densmore & Grow Bros. at auction, acting as auctioneer. I saw the stock before the seizure by the marshal; examined it by way of insuring it. The stock was in good condition. Densmore & Grow Bros. continued selling at retail after the seizure by defendant during the week and on Saturdays at auction.

Ques. Do you know anything in regard to the partnership of Gates & Marler at Dansville?

Ans. I simply know it was generally reported that such a partnership existed, and I remember seeing upon the store they occupied——

(Here the answer of the witness was interrupted by plaintiff's
26 counsel, who said "Wait a moment; he has not asked you about that.")

Whereupon defendant's counsel proceeded:

Ques. Will you state what you saw in regard to that partnership?

(But to this question plaintiff's counsel objected as immaterial, and counsel for the defendant stated to the court that said testimony and all other testimony relating to said partnership was offered for the purpose of showing that the said goods belonged to the partnership of Gates & Marler, and not to Gates at the time the mortgages were given, and that therefore Gates could not mortgage them by his separate and individual mortgage, which objection was sustained by the court, and defendant's counsel excepted to the ruling.)

Ques. Will you state whether you saw Gates advertising this partnership Gates & Marler?

(But to this question the plaintiff's counsel objected as immaterial, which objection was sustained by the court, and defendant's counsel excepted.)

Ques. Did you see him distributing handbills of the partnership?

(But to this question plaintiff's counsel objected, which objection was sustained and defendant's counsel excepted.)

Defendant's counsel then offered the testimony of FREDERIC K.
27 WALKER. A copy is hereto annexed, marked "Exhibit E." It was agreed that it was taken with the understanding that it should be used, subject to the same objections that might be made if the witness were on the stand.

(Plaintiff's counsel thereupon objected to the reading of such testimony upon the ground that the said testimony was immaterial. Court then asked if the testimony related to the partnership. Defendant's counsel answered that it did. The court then sustained the objection, and the counsel for defendant did then and there except.)

Defendant's counsel then offered the testimony of CHARLES M. GRISWOLD, taken under the same agreement and at the same time, and stated that it was for the same purpose.

(Plaintiff's counsel objected for the same reason, which objection the court sustained, and defendant's counsel excepted.)

The testimony of Griswold is hereto annexed, marked "Exhibit F."

Defence rested.

Whereupon the counsel for said defendant requested the court to charge the jury as follows:

1st. The jury is instructed that under the circumstances shown by the testimony on the part of the plaintiff, this action cannot be main-
28 tained in the joint names of Densmore and the other plaintiffs, and the jury is therefore directed to find verdict for the defendant.

2nd. The jury is instructed to render a verdict for defendant.

3rd. If the jury believe that Gates & Marler were in partnership together in business, then they are instructed that such partnership must be deemed to continue until it is shown that such partnership came to an end. And there being no evidence that such partnership came to an end, the jury is instructed that the goods for which this suit is brought must be deemed to be the property of such partnership, and are not covered by the descriptive words of the mortgages introduced in evidence, and plaintiff cannot recover.

The court then charged the jury as follows:

GENTLEMEN OF THE JURY: Counsel on each side having waived any discussion of the facts to you, it becomes my part to state the law by which you are to be guided in determining your verdict. The action, as you understand well enough, is trespass, and is brought by Thaddeus Densmore, Elisha P. Grow, and Dewitt Grow against Salmon P. Mathews. The
29 claim on the part of the plaintiff is that they were in possession of the stock of goods in question on the 16th day of January; that previous to that time the goods had belonged to one Gates, who had given two mortgages, one to Densmore and another to the other plaintiffs, Elisha P. Grow and Dewitt Grow, and that by some arrangement with Gates they had gone into possession of the goods for the purpose of selling them under their mortgages for the benefit of the mortgagees, under some arrangement that they were to share in the receipts for the goods after a manner agreed upon between them, and that on the 16th day of January the defendant unlawfully took possession of the goods and removed them. The defendant has offered some evidence on his part tending to show, I suppose, that he was marshal, and was possessed of a writ of attachment issued from the United States court for the eastern district of this State, against the goods and chattels of Gates and one Marler, but that evidence I felt obliged to reject, so that it is not before you. If you are satisfied, then, that the plaintiffs were rightfully in possession of the property on the 16th day of January last, and that at that time the defendant took possession of the goods and removed them, your verdict ought to
30 be for the plaintiffs, for the value of the goods at that time. Of course it is for you to determine the credibility of the witnesses, and not only upon the subject of value, but upon the question of the plaintiff's possession at the time of the alleged conversion.

No discussion has taken place upon the question of values, and it is left to you to determine from the evidence as best you can. The plaintiffs claim the value of the goods at that time was $820.44, and that interest upon it from that time to the present amounts to $46.10, making a total claim on their part of $866.54.

If you find for the plaintiffs you will state the value of the goods, with interest upon them, as the amount of your verdict.

Whereupon the counsel for defendant excepted to the following portions of the charge:

If you are satisfied that the plaintiffs were rightfully in possession of the property on the 16th day of January, and that at that time the defendant took possession of the goods and removed them, your verdict ought to be for the plaintiffs.

Defendant's counsel also excepted to the refusal of the court to
31 charge his first request.

Defendant's counsel also excepted to the refusal of the court to charge his second request.

Defendant's counsel also excepted to the refusal of the court to charge his third request.

And the said circuit judge, under the charge with the directions aforesaid, left the aforesaid issue and the evidence so given on the trial aforesaid to the said jury.

And the jury aforesaid then and there gave their verdict for the said plaintiffs and assessed the damages on occasion of the premises at the sum of eight hundred and sixty-six dollars and fifty-four cents.

And inasmuch as the said several matters so produced and given in evidence do not appear by the record the counsel for said defendant did then and there propose the aforesaid exceptions to the decisions and opinions of said circuit judge, and request him to sign this bill of exceptions, containing the several matters aforesaid, pursuant to the statute in such case made and provided.

And thereupon the said circuit judge, at the request of the counsel
32 for defendant, hath signed this bill of exceptions, pursuant to the statute aforesaid, on the 29th day on this January, A. D. 1880.

GEO. M. HUNTINGTON,
Circuit Judge.

33 EXHIBIT A.

This indenture, made this twenty-first day of October, in the year of our Lord one thousand eight hundred and seventy-eight, between Frank M. Gates, of Dansville, Ingraham County, Michigan, of the first part, and Thaddeus Densmore, of Mason, Ingraham County, Michigan, of the second part, witnesseth:

That the party of the first part, for and in consideration of the sum of three thousand dollars to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does grant, bargain, and sell unto the party of the second part all and singular the goods and chattels hereinafter mentioned, that is to say, his entire stock of goods, wares, and merchandise, embracing dry goods, notions, gents' furnishing goods, boots and shoes, hats and caps, groceries and wooden ware, and books of account, now situate in the store-house now occupied by the said party of the first part, on lots number seven (7) and eight (8) in block number six (6), in the village of Dansville, in the county of Ingham, and State of Michigan, together with all goods, wares, and merchandise that may at any time hereafter be placed in said store or added to said stock for the purpose of merchandising by the said party of the first part.

34 To have and to hold all and singular the said goods and chattels unto the party of the second part, his executors, administrators, and assigns forever, said goods and chattels now remaining and continuing in the possession of the party of the first part at said store, in the

village of Dansville, county of Ingham, and State of Michigan. Provided always, and these presents are upon the express condition that if the party of the first part shall and do well and truly pay or cause to be paid to the said party of the second part the sum of three thousand dollars, as follows: One thousand dollars on or before sixty days from the date of this instrument; one thousand dollars on or before four months from the date of this instrument, and the balance, one thousand dollars, on or before six months from the date of this instrument, with interest at the rate of ten per centum per annum on all that shall from time to time remain unpaid, then these presents shall cease and be null and void. And the party of the first part hereby covenants and agrees to and with the party of the second part to pay to him the said sum of three thousand dollars, with interest as aforesaid, at the times and in the manner
35 above stated. But in case default shall be made in the payment of the said sum, or the interest thereon, or any part thereof, at the times above limited for the payment of the same, or if the said party of the first part shall sell, assign, or dispose of, or attempt to sell, assign, or dispose of, the whole or any part of the said goods or chattels, or remove or attempt to remove the whole or any part thereof from the said village of Danville without the written assent of the party of the second part, then and from thenceforth it shall and may be lawful for the said party of the second part, his executors, administrators, or assigns, or his, her, or their authorized agent, to enter upon the premises of the said party of the first part, or any place or places where the said goods and chattels, or any part thereof may be and take possession thereof, and to sell and dispose of the same for the best price or prices that can be obtained therefor, at public vendue, giving six days' notice of such sale by written or printed notices, to be posted at three or more public places in the said county of Ingham, and out of the money to arise by such sale thereof to pay and retain the said sum of money above mentioned, and the interest thereon, and all charges of such sale (if so much there shall be)
36 rendering the surplus moneys (if any there shall be to the said party of the first part.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

FRANK M. GATES. [L. S.]

37 EXHIBIT B.

Know all men by these presents that I, Frank M. Gates, of Dansville, Ingham Co., Michigan, party of the first part, being justly indebted unto Palmer Grow & Dewitt Grow, copartners, of Bay City, Bay Co., Michigan, parties of the second part, in the sum of twenty-three hundred seven & $\frac{85}{100}$ dollars have, for the purpose of securing payment of said debt and the interest thereof, and is desirous of procuring goods, wares, and merchandise of said second part upon credit, and any indebtedness growing out of purchases hereafter made as aforesaid, granted, bargained, sold, and mortgaged, and by these presents do grant, bargain, sell, and mortgage, unto the said second parties the following goods, chattles, and personal property, to wit, all the stock of goods, wares, & merchandise situated in, on, and about the store, premises of first party, in said Dansville, & consisting of stock of dry

goods, clothing, millinery goods, trunks, boots & shoes, groceries, hats & caps, gloves & mittens, & show-cases, coffee-mill, yankee notions, produce, wooden & glass ware, store furniture & fixtures, carpets, etc., book accounts & claims; & also all additions made to said stock from time to time shall be included in this mortgage, which said above-described goods,
38 chattels and property, at the date hereof, are situate at the premises aforesaid, in the village of Dansville, Ingham County, Michigan, and are free and clear from all liens, conveyances, incumbrances, and levies, except chattel-mortgage to Thaddeus Densmore, and for a valuable consideration I hereby warrant the above representations to be true. To have and to hold the same forever. Provided always, and the condition of these presents is such, that if the said first party shall pay, or cause to be paid, the said second parties the debt aforesaid with the interest at ten per cent., in three equal payments, due sixty days, four months, & six months respectively from date, and any indebtedness growing out of purchases hereafter made as aforesaid, when the same shall become due and payable, then this instrument shall be void and of no effect. And it is hereby expressly agreed that in default of the payment of the said indebtedness, or any part thereof, at the time when the same is due and payable, then the whole amount secured by said mortgage shall become due and payable, that anything in said notes to the contrary notwithstanding. The said party of the first part agrees to pay the same accordingly. But if
39 default be made in such payment, the said second parties are hereby authorized to and shall sell at public auction, after the like notice as is required by law for constables' sales, the goods, chattels, and personal property hereinbefore mentioned, or so much thereof as may be necessary to satisfy the said debt, interest, dollars as an attorney fee, should any proceedings be taken to foreclose this endenture and reasonable expenses, and to retain the same out of the proceeds of such sale, the overplus or residue, if any, to belong and to be returned to said first party. And the said second parties are hereby authorized at any time when they shall deem themselves insecured, or if the said party of the first part shall sell, assign, or dispose of, or attempt to sell, assign, or dispose of, the whole or any part of the said goods and chattels, or remove or attempt to remove the whole or any part thereof, from the said village of Dansville, without the written assent of the parties of the second part, then and from thenceforth it shall and may be lawful for the said parties of the second part, their executors, administrators, or assigns, or his, her, or their authorized agent, to enter upon the premises of the said party of the first part,
40 or any place or places where the said goods and chattels, or any part thereof, may be, and take possession thereof, and the same retain in some convenient place, at the risk and expense of said first party, until the said sum of money shall become due as aforesaid, and then to dispose of the same in the manner above specified.

In witness whereof the said party of the first part has hereunto set his hand and seal the 21st day of October, in the year of our Lord one thousand eight hundred and seventy-eight.

FRANK M. GATES. [L. S.]

Exhibit B.

41 EXHIBIT C.

Great mortgage sale.

The entire stock of Frank Gates, in the village of Dansville, Mich., consisting of dry goods, groceries, boots & shoes, clothing, hats and caps, gents' furnishing goods, yankee notions, millinery, etc., must be sold, regardless of costs, in the next 60 days, and in order to do this we will offer special inducements to purchasers. We will make it for your interest to come and see us. We can and will sell cheaper than any one in the State. We mean business. It must be sold. Auctions every Saturday. Now is your time to buy. Don't forget the place.

T. Densmore & Grow Bros., mortgagees, Dansville, January 2nd, 1879.

P. S.—Butter and eggs taken at market prices in exchange for goods.

42 EXHIBIT D.

Appraisal of goods seized by U. S. marshal at Dansville, Mich., Jan. 16th, 1879, by attachment.

30	y'ds fig. alpaca, 15	4	50
35	" dress suitings, 10	3	50
23	" fig. alpaca, 15	3	45
20	" shirting, 15	3	00
45	" do. 11	4	95
16	" " 20	3	20
20	" linser, 12	2	52
7	" red flannel, 20	1	40
13	" " " 21	3	25
13	" linser, 15	1	95
25	" chi. shirting, 10	2	50
32	" col. cotton flannel, 10	3	20
31	" gray shirting, 16	4	96
12¼	" water-proof, 45	5	50
29	" dress gingham, 7	2	03
43	" g. cambric, 10	4	30
14	" " " 10	1	40
36	" sheeting, 7	2	52
30	" cottonade, 11	3	75
42	" Java canvass, 14	5	88
45	" " " 32	14	40
16	" check shirting, 11	1	76
30½	" gray cassimere, 10	21	35
15½	" bl. beaver, 1.40	22	20
45	" check, 18	3	96
38	" bl'k alpaca, 22	8	36
22	" " " 18	3	96
	45 " dress drill, 9	4	05
43	29 yds. linser, 22	6	38
	38 " print, 5½	2	09
21	" " 5½	1	15

2½	" crape 1.50	3 75
2	" " 1.75	3 50
1	bed spread	75
15	yds. victoria lawn, 15	2 25
9	" " " 12	1 08
11	" " " 15	1 65
11	" berage, 22	2 42
5	" Russian crash, 45	2 25
10	" brown bleech, 6	60
19	" C. flannel, 6	1 14
24	" Lonsdale cambric, 15	3 60
16	" crash, 8	1 28
30	" " 6	1 80
14	" C. flannel, 8	1 12
4	towels, 16	64
2	" 15	30
33	yds. demins, 11	3 63
18	" " 11	1 98
5½	" " 11	61
7	" check, 10	70
6	" duck demins, 11	66
9	" " " 10	90
29	" Ky. jeans, 2s	7 25
23	" cottonade, 15	3 45
7	" satinette, 2s	1 75
10¾	" doeskin cap, 1.10	12 82
2	" cloaking, 2.00	4 00
11 1/2	doz. stoga boots, 30.00	27 50
	11 pieces black ribbon for	11 00
44	7 h. stitched h'd'fs, 1s	87
	8 " " " 15	1 20
4	doz. r. cotton, 2.00	8 00
3 11 1/2	" linen h'd'fs, 2.50	9 79
4	silk " 4s	2 00
2	" " 65	1 30
1	" " 6s	75
1	" "	35
2	" " 4s	1 00
3	linen " 35	1 05
No. 6,	8 emson m., 50	4 00
" 4,	4 " " 65	2 60
	1 doz. costor gloves	12 00
	2 pr. suspenders, 65	1 30
	8 " " 20	1 60
	4 " " kid gloves, 2.00	10 00
No. 6,	9 " assorted " 12s	13 50
" 10,	3 " ladies' boots, 14s	5 25
"	3 " " " 1.88	5 64
"	8 " " " 10s	8 00
" 8,	9 " " " 1.40	12 60

	"11, 3 " " " 1.75		5 25
	" 3, 11 " " " 1.65		18 15
	" 4, 8 " " " 1.50		12 00
	" 7, 11 " " " 11*s*		18 00
	" 2, 5 " " " 14*s*		8 75
	" 1, 8 " " " 20*s*		20 00
	$2\frac{2}{12}$ doz. overalls, 7.00		15 16
	$2\frac{11}{12}$ " $\frac{1}{2}$ hose, 2.00		5 83
	35 burlap warp, 10		6 30
	$\frac{7}{12}$ doz. pr. overalls, 5.75		3 46
	$\frac{1}{3}$ " " " 5.00		1 66
	$\frac{1}{3}$ " suits, 12.00		4 00
45	Case No. 2, 12 prs. stoga boots (M. C. & C.), 18.00 per doz.		18 00
	" 3, 10 " " " (Wilcox), 34.00		28 35
Case No. 4,	8 " " " (Baldwin), 28.00		18 64
"	" 3 " " " (Ann Arber), 1.50		4 50
"	5, 12 " " " (Wilcox), 30.00		30 00
"	6, 10 " " " (") 34.00		28 35
Lot	119, 6 shirts, 65		3 95
"	181, 9 sailor shirts, 6*s*		6 75
	170, 12 gray mds. " 6.00		6 00
	171, 1 doz. white " "		3 00
	172, 1 " gray " "		3 00
	173, $\frac{7}{12}$ " ribbed, 35		2 45
	3 " $\frac{1}{2}$ hose, 2.50		7 50
	L. B., 14 white shirts, 60		8 40
	102, 10 under " 4*s*		5 00
	237, 19 pr. ladies pants, 38		7 22
	No. 8, 6 " children's shoes, 90		5 40
	" 00, 7 " ladies boots, 8*s*		7 00
	6 " buck & calf mitts, 4*s*		3 00
	25 yds. check shirting, 9		2 25
Lot	445, 1 pr. pants		1 00
"	7, 1 " "		2 00
"	23, 1 " "		1 00
"	11, 1 " "		1 50
"	15, 2 " " 1.50		3 00
"	33, 8 " " 1.00		8 00
"	24, 2 " " 1.75		3 00
"	6013, 2 " " 3.00		6 00
"	6151, 6 " " 2.00		12 00
"	6383, 3 " " 2.00		6 00
"	226, 2 " " 1.50		3 00
	" 8883, 1 " "		1 63
46	Lot 221, 1 pr. pants		1 75
	" 220, 3 " " 1.86		5 58
"	510, 3 " " 1.75		5 25
"	24, 1 " "		1 00
"	6280, 2 " " 2.00		4 00
"	5837, 3 " " 2.50		7 50
"	1588, 6 " " 1.75		10 55

"	6387,	2	"	" 2.50	5 00
"	6538,	2	"	" 4.00	8 00
"	3865,	1	"	" 5.00	5 00
"	4976,	1	"	" 5.00	5 00
Lot	,	1	"	"	2 00
Lot	9418,	2	"	" 2.00	4 00
"	3510,	1	"	"	2 50
"	6285,	4	"	" 10s	5 00
"	6393,	1	"	" 10s	1 25
"	6342,	4	"	" 10s	5 00
				$14\frac{3}{4}$ wool yarn, 6s	11 06
					$819 94

(S'g'd) LEVI GEER,
EGBERT RICE,
Appraisers.

47 In the circuit court of the United States for the eastern district of Michigan.

STEPHEN B. SIMONS, CORNELIUS P. HATCH, & HENRY C. WHITTEN,
vs.
FRANK GATES & FRANK MARLER.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

Julian G. Dickinson, being duly sworn, says that he is the attorney for the above-named Stephen B. Simons, Cornelius P. Hatch, & Henry C. Whitten, who comprise the firm of Simons, Hatch & Whitten, plaintiffs, in the above-entitled cause; that said plaintiffs' action in the said cause is founded upon contract express & implied, and was commenced by declaration in said court, wherein judgment has not yet been recovered; that the said declaration in said cause has been personally served upon the said Frank Gates, who is now the only existing member of said firm, the said Marler having never acted as a member of the firm of Gates & Marler, but having absconded *had* concealed himself ever since the purchase of the goods upon which this action is founded.

48 And deponent further says that said defendants in the annexed writ in said cause are indebted to said plaintiffs in said writ in the sum of five hundred dollars, over and above all legal set-offs, as near as this deponent can estimate the same, upon contract express and implied; that this deponent has good reason to believe that the said defendants fraudulently contracted the said debt, respecting which the said suit is brought; that the said defendants have disposed of their property with intent to defraud their creditors; and further the deponent saith not.

(S'g'd) JULIAN G. DICKINSON.

Sworn to subscribed before me this 13th day of January, A. D. 1879.

(S'g'd) ADDISON MANDELL,
Com'r Circuit Court U. S., E. D. of Michigan.

49 In the circuit court of the United States for the eastern district of Michigan.

STEPHEN B. SIMONS, CORNELIUS P. HATCH, and HENRY C. WHITTEN
vs.
FRANK GATES & THOMAS MARLER.

Circuit court United States for the eastern district of Michigan, ss.

The President of the United States of America to the marshal of the eastern district of Michigan, greeting:

Whereas a suit has been commenced in the above-entitled cause in said court by declaration in the action of assumpsit founded on an express and implied contract, which said suit is now pending & undetermined:

[SEAL. You are therefore commanded to attach so much of the lands tenants goods, chattels, moneys, and effects of Frank Gates and Thomas Marler, who are citizens of the State and residents of the eastern district of Michigan, the defendants in said suit, not exempt from execution,

50 wheresoever the same may be found within said district, as will be sufficient to satisfy the demand of the said Stephen B. Simons, Cornelius P. Hatch, and Henry C. Whitten, plaintiffs in said suit, who are citizens of the State of Massachusetts, amounting, as is alleged, to the sum of five hundred dollars and upwards over and above all legal set-offs, and safely keep the same to satisfy any judgment that may be recovered by the said plaintiffs in said suit against the said defendants. And have you then and there this writ, with a return of your doings thereon, before the judges of said court, at the district court-room, in the city of Detroit, on Tuesday, the fourth day of February, A. D. 1879.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this thirteenth day of January, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independance of the United States the one hundred and third.

(S'g'd) ADDISON MANDELL, *Clerk.*

51 EASTERN DISTRICT OF MICHIGAN, *ss:*

I do hereby certify and return that I executed the within writ of attachment on the 16th day of January, A. D. 1879, by seizing, within the said district, the lands, tenants, goods, chattels, moneys, and effects of the defendants, designated and described in the inventory thereof, which is hereto annexed; and by making the said inventory, and by serving, within said district, a copy of such attachment and inventory, duly certified by me, upon Frank Gates, at Dansville, in said district.

(S'g'd) S. S. MATHEWS, *U. S. Marshal.*

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

I, Addison Mandell, the clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to a true copy

of the original appraisement, affidavit for writ, writ of attachment, & return of the marshal thereon endorsed, on file and of record in my office in the cause therein entitled; that I have carefully compared the same with said original, and that it is a true copy thereof, and of the whole of said original.

52 In testimony whereof I have hereunto set my hand and affixed the seal of said court at Detroit, in said district, on this 4th day of October, A. D. 1879.

[SEAL.] ADDISON MANDELL, *Clerk*,
By JNO. GRAVES, *Dep'y Clerk*.

53 EXHIBIT E.

In the circuit court for the county of Ingham.

THADDEUS DENSMORE, ELISHA P. GROW, & Dewitt Grow
vs.
SALMON S. MATHEWS.

Testimony taken on the part of the defendant, at the city of Detroit, this 18th day of September, A. D. 1879, before George H. Carlisle, notary public for the county of Wayne and State of Michigan. Present, Mr. H. E. Henderson, for the plaintiff; J. G. Dickinson, for the defendant.

FREDERRICK K. WALKER, being duly sworn on the part of the defendant, upon examination by Mr. DICKINSON, testified as follows:

Ques. Do you know the other parties to this suit, Densmore, Grow and Mathews?

Ans. I do not.

Ques. Did you ever know a firm doing business by the name of Gates and Marler?

Ans. I have.

Ques. Did you meet either of the parties to that firm?

Ans. I did.

Ques. Whom did you meet?

54 Ans. Mr. Gates.

Ques. Frank Gates?

Ans. I cannot tell you his other name.

Ques. But you met Mr. Gates?

Ans. Yes, sir.

Ques. Where were they purporting to be doing business?

Ans. I think it was in Dansville, Mich.

Ques. When was that?

Ans. It was on the fourth day of October, 1878.

Ques. Did you have any transactions with him?

Ans. I did.

Ques. State what it was.

Ans. Mr. Gates came into the store and said he had taken in a partner by the name of Marler, and was going to put in a stock of groceries; he had been dealing in dry goods; but his partner was putting in some money and he wanted to buy a stock of groceries of us; we sold him goods

to the amount of $391.74. Sold the firm of Gates and Marler goods to that amount, and guaranteed $110.74. I took him to Mr. Edgar, and he bought some sugar, and I said if he didn't pay I would.

Ques. This was $110 besides the $391.00?

Ans. Yes, sir.

Ques. What was done with these goods?

Ans. They were sold to Gates and Marler, at Dansville.

Ques. And shipped to them?

55 Ans. Yes, sir.

Ques. By what route?

Ans. By railroad, the usual route.

Ques. According to instructions?

Ans. Yes, sir.

Ques. You did not see Mr. Marler?

Ans. No, sir.

Ques. Did you ever see the complainant?

Ans. No, sir; I did not.

Ques. State what you did with regard to the connections.

Ans. When I found out that Mr. Marler had disappeared and not put any money in there I sent an agent there to try and settle it, but he could not do it, and I then had the sheriff go over there with the clerk in our store in order to identify the goods, and issued an attachment or replevin. They got the goods out and got ready to take them away and Mr. Densmore paid us in money for them. He paid us for what we inventoried; they inventoried at about sixty per ct. of the bill we sold them, and they were put back in the store.

Ques. You saw nothing more of the goods after this transaction?

Ans. No, sir.

Ques. And saw nothing of Mr. Marler?

Ans. No, sir.

56 Ques. All you know of the firm of Gates & Marler is what Mr. Gates represented to you?

Ans. Yes, sir.

Ques. At that time he represented that there was such a partnership?

Ans. He stated that he had taken in Marler as a partner.

Ques. Did he state the amount of their stock?

Ans. He did not.

Ques. This conversation you had with him was at your store?

Ans. At our store, yes, sir.

Ques. Who was the clerk that you sent out to identify the goods?

Ans. His name was Charles Griswold.

Ques. Do you know how many goods Gates bought here for that firm?

Ans. I do not know.

Ques. Do you know he did buy?

Ans. Yes, sir.

Ques. State what you had to do with him.

Ans. I introduced him to Mr. Edgar in a very off-handed sort of a manner, supposing that there was no question about his solvency and the desirability of the firm; and I says that he wanted to buy some sugar and will pay for it, and if he don't I will. I did not consider at the time that I was guaranteeing the payment for those goods, but of course I felt in

honor bound to pay for them. I introduced him to Mr. Weath-
57 erby, and he sold him a small bill.

Ques. They were all shipped to the firm of Gates and Marler?

Ans. Yes, sir; or I ought not to swear to that; I have their word for it.

Ques. Did you introduce him to Mr. Wilcox?

Ans. I did not.

Cross-examination by Mr. HENDERSON:

Ques. You never knew Mr. Marler?

Ans. No, sir.

Ques. Never met him?

Ans. No, sir.

Ques. And the only thing you know about the copartnership is what Mr. Gates said to you?

Ans. Yes, sir.

Ques. Did a Mr. Clark go to Mason as your agent in this matter?

Ans. Yes, sir.

Ques. A replevin was taken out, you understood, did you not, for your goods?

Ans. I don't know what that question implies.

Ques. Did you not understand that a writ was taken out but not served; was taken out from the court and taken out there to serve?

Ans. I cannot say about that.

Ques. You say they did go over there and set out your goods?

Ans. Yes, sir.

58 Ques. Didn't you understand that that was done under a writ of replevin?

Ans. Yes, sir; there had been one served, or there was one to serve. I don't know whether those things are made out beforehand or not.

Ques. Do you not know that the theory upon which you replevined these goods was that a fraud had been perpetrated upon you in their purchase?

Ans. I don't think it was an intentional fraud; I don't know whether you call it that or not; I don't think that he intended any fraud.

Ques. Did you not understand that that was the theory, that it operated as a fraud upon you?

Ans. Yes, sir.

Ques. Did you not understand that the fraud was representing that there was a partnership existing when there was not?

Ans. Yes, sir.

Redirect examination:

Ques. You had no information from Mr. Gates that the partnership did not exist?

Ans. I had direct information that it did exist, from him. My testimony of replevining the goods was that they were sold to a firm that did not exist, and Mr. Gates had no right to mortgage.

Ques. You learned from other sources than Mr. Gates that the
59 partnership did not exist?

Ans. Yes, sir; from other sources. I learned it from general report that Mr. Marler had started from Bay City to go to Dansville and had never been heard from.

Ques. And upon that you based the theory that the partnership did not exist?

Ans. I thought that the partnership was broken up from that theory.

FREDERICK K. WALKER.

EXHIBIT F.

CHARLES WILLIAM GRISWOLD, being duly sworn on behalf of the defendant, and examined by Mr. DICKINSON, testified as follows:

Ques. What is your business?

Ans. Shipping clerk for Mess. Evans & Walker.

Ques. Do you remember going to Mason for Evans and Walker in respect to a claim against Gates & Marler?

Ans. Yes, sir.

Ques. When was that?

Ans. I should think it was the last of October. The bill was sold to him on the fourth.

Ques. You knew of the goods being sold?

Ans. They were on the books and I shipped them; yes, sir.

60 Ques. State whether you saw any of the stock of Gates & Marler in Dansville.

Ans. Yes, sir; I saw our goods there in Dansville and identified them, or a part of them were there.

Ques. State whether you identified them.

Ans. Yes, sir; I took an inventory the latter of October, I should think.

Ques. Do you recollect seeing Mr. Densmore there?

Ans. I saw a gentleman there they called Mr. Densmore.

Ques. Do you recollect of his settling for these goods?

Ans. He settled with a Mr. Clark. I made out an inventory of the goods.

Ques. You only took an inventory of your own goods?

Ans. Yes, sir.

Ques. They were in stock there?

Ans. Yes, sir; they were.

Ques. Did you see Mr. Marler?

Ans. I did not.

Ques. Have you ever seen him?

Ans. No, sir.

Ques. Did you have any talk with Mr. Gates about Mr. Marler?

Ans. No, sir.

Ques. Nor with Mr. Densmore?

Ans. No, sir; not that I remember.

Cross-examination by Mr. HENDERSON:

61 Ques. You saw these goods in stock at Mr. Gates and Marler?

Ans. Yes, sir; they were in stock at the store in Dansville. Of course I knew nothing about Mr. Marler, but our goods were there.

Ques. Who was in possession of the stock at that time?

Ans. Mr. Gates; and this old gentleman, Mr. Densmore, was there, I think, at the time I went there.

Ques. Do you know that at that time Mr. Densmore claimed to have possession of the stock?

Ans. No, sir; I could not say that, because I did not pay any regard to it.

Ques. Why did you call the stock that was there Gates & Marler stock?

Ans. It was known as such on our books.

Ques. Simply because it was known as such on your books?

Ans. Yes, sir.

Ques. You saw the old gentleman that they called Mr. Densmore?

Ans. Yes, sir; that is, they said his name was Densmore.

Ques. Was he a rather large, stocky man?

Ans. Yes, sir. I should think he was a man about your height; probably a little heavier than you are.

Ques. Don't you know that that was a man by the name of Fox?

Ans. No, sir.

62 Ques. Did you meet Mr. Fox?

Ans. No, sir.

Ques. Who paid the money?

Ans. That I could not say; Mr. Clark settled that.

Ques. Do you know that the money was not paid by Mr. Gates?

Ans. No, sir.

Ques. Didn't you hear Mr. Clark say?

Ans. No, sir.

Ques. You don't know who it was paid by?

Ans. No, sir.

Ques. Had no difficulty in identifying the goods?

Ans. No, sir.

Ques. A replevin had been issued, and you were ready to serve it?

Ans. Yes, sir; I think it was in the office.

Ques. You were there at this time?

Ans. Yes, sir; I was.

CHARLES W. GRISWOLD.

63 COUNTY OF WAYNE,
State of Michigan, ss:

I, George H. Carlisle, a notary public in and for the county of Wayne, do hereby certify that the foregoing testimony of Frederick K. Walker and Charles W. Griswold was taken before me, in the city of Detroit, on the 18th day of September, by stipulation between the attorneys in the case, to be read in the trial of the above cause in the circuit court for the county of Ingham, and that the witnesses above named were by me duly sworn to tell the truth, the whole truth, and nothing but the truth, and that the evidence was reduced to writing by me and read over to and signed by them.

[SEAL.] GEORGE H. CARLISLE,
Notary Public, Wayne County, Michigan.

64 At a general term of the circuit court for the county of Ingham, continued and held at the court-house in the city of Mason, in said county, on the 3rd day of January, A. D. 1880.

Present, Geo. M. Huntington, circuit judge.

THADDEUS DENSMORE, ELISHA P. GROW, AND Dewitt Grow
vs.
SALMON S. MATHEWS.

In this cause, on motion of Julian G. Dickinson, attorney for defendant, attorney for plaintiffs consenting thereto, it is ordered by the court now here that said defendant be, and he hereby is, allowed until and including the first day of the next term of this court in which to prepare and settle a bill of exceptions in said cause, and that in the meantime all proceedings on the part of the plaintiffs be stayed.

GEO. M. HUNTINGTON,
Circuit Judge.

65 At a general term of the circuit court for the county of Ingham, continued and held at the court-house in the city of Mason, in said county, on the 21st day of October, A. D. 1879.

Present, Hon. Geo. M. Huntington, circuit judge.

THADDEUS DENSMORE, ELISHA P. GROW & Dewitt Grow,
vs.
SALMON S. MATHEWS.

In this cause, by consent of counsel in open court, ordered that the time for settling a bill of exceptions on behalf of the defendant be, and the same is hereby, extended to and including the first day of the next term of this court, and that all proceedings therein be stayed to that time, except the taxation of costs and entry of judgment.

GEO. M. HUNTINGTON,
Circuit Judge.

66 At a general term of the circuit court for the county of Ingham, continued and held at the court-house in the city of Mason, in said county, on the 21st day of October, A. D. 1879.

Present, Hon. Geo. M. Huntington, circuit judge.

THADDEUS DENSMORE, ELISHA P. GROW, AND Dewitt Grow
vs.
SALMON S. MATHEWS.

In this cause the parties being in court by their respective attorneys, ready for trial, thereupon came a jury, to wit, George B. Tallmadge, Daniel L. Cady, Kiran A. Mixter, Anson Stratton, George H. Galusha, D. J. Potter, John M. Brown, Benjamin Judson, H. G. Willard, Peter Zimmer, Milton Johnson, and Charles Dunn, good and lawful men, who, being duly chosen, tried, and sworn, well and truly to try the issue between the parties, after hearing the proofs and allegations of the parties, the arguments of counsel, and the charge of the court, retired from the bar under the charge of A. J. Bartlett, an officer of court duly sworn for that purpose, to consider of their verdict to be given, and after
67 being absent for a time, return into court and say upon their oath that the said defendant is guilty in manner and form as the said

plaintiffs hath in their declaration in this cause complained against him, and they assess the damages of the said plaintiffs on occasion of the premises over and above their costs and charges by them about their suit in this behalf, expended at the sum of eight hundred and sixty-six dollars and fifty-four cents.

GEO. M. HUNTINGTON,
Circuit Judge.

68 In the circuit court for the county of Ingham.

THADDEUS DENSMORE, ELISHA P. GROW, AND Dewitt Grow
vs.
SALMON S. MATHEWS.

And now comes the defendant in the above-entitled cause and demands a trial of the matters set forth in the plaintiffs' declaration.

J. G. DICKINSON,
Defendant's Attorney.

Please take notice that under the general issue above pleaded the said defendant will show that the goods and chattels in controversy in said cause were taken by said defendant, as United States marshal for the eastern district of Michigan, under and by virtue of a writ of attachment issued out of and under the seal of the circuit court of the United States and directed to the said defendant as United States marshal for the eastern district of Michigan, and commanding him, the said United States marshal, to attach so much of the lands, tenements, goods, chattels, money, and effects of the said defendants therein named, to wit, Frank Gates and Thomas
69 Marler, not exempt from execution, wheresoever the same may be found within said district, as will be sufficient to satisfy the plaintiffs' demand, and safely keep the same to satisfy any judgment that may be recovered by the plaintiffs in said writ, &c., in which said writ Stephen B. Simons, Cornelius P. Hatch, and Henry C. Whitten, of Boston, Massachusetts, and citizens of the State of Massachusetts, are plaintiffs, and Frank Gates and Thomas Marler, citizens of the State of Michigan, are defendants, in a certain suit in assumpsit theretofore commenced and pending in the United States circuit court for the eastern district of Michigan, between the same parties, plaintiffs and defendants; that under and by virtue of said writ of attachment the said defendant, as United States marshal, to wit, on the day of , attached certain goods and chattels, to wit, the goods and chattels of the said Gates and Marler, to wit, at Dansville, Ingham County, Michigan, within the eastern district of Michigan; that the said goods and chattels attached by the said defendant were then and there subject to the said writ, being then and there the property of the said Gates and Marler named in said writ, and within the juris-
70 diction of the said circuit court of the United States for the eastern district of Michigan, under the provisions of said writ in said suit.

Dated March 22d, 1879.

J. G. DICKINSON,
Defendant's Attorney.

To H. P. HENDERSON, Esq.,
Attorney for Plaintiffs.

71 STATE OF MICHIGAN:

The circuit court for the county of Ingham.

THADDEUS DENSMORE, ELISHA P. GROW, AND Dewitt Grow
vs.
SALMON S. MATHEWS.

INGHAM COUNTY, *ss:*

Thaddeus Densmore, Elisha P. Grow, and Dewitt Grow, plaintiffs, by Henry P. Henderson, their attorney herein, complain of Salmon S. Mathews, defendant herein, who has been duly summoned to answer the said plaintiffs in a plea of trespass, for that the said defendant heretofore, to wit, on the 16th day of January, A. D. 1879, with force and arms, to wit, at the township of Ingham, in said county, seized, took, and carried away certain goods and chattels, to wit, 75 yards of figured alpacca cloth, 50 yards of dress suitings cloth, 100 yards of shirting cloth, 40 yards of linsey cloth, 30 yards of red flannel clo h, 40 yards of the suiting cloth, 50 yards of colored cotton-flannel cloth, 50 yards of gray shirting cloth, 20 yards of water-proof cloth, 50 yards of dress
72 gingham cloth, 70 yards of cambric cloth, 50 yards of shirting cloth, 40 yards of cottonade cloth, 100 yards of Java canvas cloth, 20 yards of check shirting cloth, 50 yards of gray cashmere cloth, 25 yards of black beaver cloth, 60 yards of check cloth, 75 yards of alpacca cloth, 60 yards of dress drill cloth, 40 yards of linsey cloth, 75 yards of print or calico cloth, 10 yards of crape, 5 bedspreads, 50 yards of Victoria lawn cloth, 20 yards of berage, 10 yards of Russian crash cloth, 25 yards of brown bleached cloth, 50 yards of cotton-flannel cloth, 40 yards of Lonsdale cambric cloth, 60 yards of crash cloth, 10 towels, 75 yards of demins cloth, 10 yards of check cloth, 30 yards of duck demins cloth, 50 yards of Kentucky jeans cloth, 40 yards of cottonade cloth, 10 yards of satinet cloth, 20 yards of doeskin cloth, 5 yards of cloaking cloth, 20 pairs of stoga boots, 20 pieces of velvet ribbon, 25 handkerchiefs, 10 dozen balls knitting cotton, 75 linen handkerchiefs, 20 silk handkerchiefs, 2 dozen pairs castor gloves, 15 pairs suspenders, 10 pairs kid shoes, 20 pairs assorted shoes, 100 pairs ladies' boots, 60 pairs overalls, 5 dozen pairs ½ hose, 50 pounds of peerless carpet warp, 10 suits of overalls, 80 pairs boots, 10 regligee shirts, 15 sailor shirts, 50 pairs
73 ½ hose, 100 undershirts, 20 white shirts, 40 pairs ladies' pants, 12 pairs children's shoes, 12 pairs ladies' boots, 30 pairs buck and calf , 50 yards of shirting cloth, 100 pairs of pants, 30 pounds of woolen yarn, of the said plaintiffs, of great value, to wit, of the value of two thousand dollars, then and there found and being and and disposed of the same to his own use and other wrongs to the said plaintiffs, then and there did, against the peace of the people of the State of Michigan, and to the damage of the said plaintiffs two thousand dollars; and therefore they bring suit.

H. P. HENDERSON,
Attorney for Plaintiffs.

74 The circuit court for the county of Ingham.

STATE OF MICHIGAN,
Ingham County, ss:

To the sheriff in the county of Ingham greeting:

In the name of the people of the State of Michigan you are commanded to summon Salmon S. Mathews to be and appear before the circuit court of the said county, at the court-house in the city of Mason, upon the 24th day of February, A. D. 1879, then and there to answer unto Thaddeus Densmore, Elisha P. Grow and Dewitt Grow, in a plea of trespass to their damage ten thousand dollars, which shall then and there be made to appear, and of this writ make due return.

Witness the honorable Geo. M. Huntington, circuit judge, at Mason, this 17th day of January, in the year of our Lord one thousand eight hundred and seventy-nine.

CLAUDE C. WALKER, *Clerk,*
By JNO. C. SQUIRES, *Deputy.*

75 STATE OF MICHIGAN,
County of Ingham, ss:

On this 17th day of January, A. D. 1879, I hereby certify and return that I served the within summons upon the within named Salmon S. Mathews, defendant, in said county of Ingham by personally delivering to him a true copy hereof and exhibiting to him this original, under the seal of the court.

Fees, 3.50.

JAMES R. DART,
Sheriff of said County.
By HARRY O. CALL,
Under Sheriff.

76 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the State of Michigan, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court before you, being the highest court of law and equity of the said State of Michigan in which a decision could be had in said suit between Salmon S. Mathews, plaintiff in error, and Thaddeus Densmore, Elisha P. Grow, and Dewitt Grow, defendants in error, a manifest error hath happened to the great damage of the said Salmon S. Mathews, as by his complaint appears: We being willing that error, if done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in the said Supreme Court to be
77 then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done

therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, this eighth day of May, in the year of our Lord one thousand eight hundred and eighty.

[SEAL.] ADDISON MANDELL,
Clerk of Circuit Court U. S., Eastern District of Michigan.

Allowed by— ISAAC MARSTON,
Chief Justice Supreme Court, Michigan.

78 UNITED STATES OF AMERICA, *ss:*

To Thaddeus Densmore, Elisha P. Grow, and Dewitt Grow greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Michigan, wherein Salmon S. Mathews is plaintiff in error and Thaddeus Densmore, Elisha P. Grow, and Dewitt Grow are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be arrested, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Isaac Marston, chief justice of the supreme court of the State of Michigan, this 15' day of June, in the year of our Lord one thousand eight hundred and eighty.

June 15, 1880.

ISAAC MARSTON,
Chief Justice Sup. Ct., Mich.

79 STATE OF MICHIGAN,
County of Wayne:

Oliver M. Leonard, being duly sworn, says that on the 25th day of June, A. D. 1880, he served a true copy of the within citation upon Henry P. Henderson, attorney for the defendants in error, by delivering the same to him personally, in the city of Detroit, Wayne County, Michigan. The said Henderson was the attorney for said defendants in error in the court below.

OLIVER M. LEONARD.

Subscribed and sworn to before me this 30th day of June, A. D. 1880.

[SEAL.] ELLWOOD T. HANCE,
Notary Public, Wayne Co., Mich.

(Indorsed:) Supreme Court of the United States. Salmon S. Mathews, pl'ff in error, vs. Thaddeus Densmore, Elisha P. Grow, & Dewitt Grow, def'd'ts in error. Citation. Supreme Court. Filed July 1, 1880. Ed. W. Lowe, deputy clerk. Don M. Dickinson, att'y for pl'ff in error.

80 Supreme Court of the United States.

SALMON S. MATHEWS, PLAINTIFF IN ERROR,
vs.
THADDEUS DENSMORE, ELISHA P. GROW, & DEWITT GROW, defendants in error.

Know all men by these presents that we, Stephen B. Simons and Henry C. Whitten, of the city of Boston, Massachusetts, as principals, and James Gourlay and Alfred L. Gourlay, of the city of Detroit, Michigan, as sureties, are held and firmly bound unto Thaddeus Densmore, Elisha P. Grow, and Dewitt Grow in the sum of three thousand dollars, to be paid to the said Thaddeus Densmore, Elisha P. Grow, and Dewitt Grow, their executors or administrators; to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated this 7th day of June, 1880.

Whereas the above-named Salmon S. Mathews hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of Michigan:

81 Now, therefore, the condition of this obligation is such that if the above-named Salmon S. Mathews shall prosecute his said writ of error to effect, and answer all costs and damages if he shall fail to make good his plea, then the obligation shall be void; otherwise to remain in full force and virtue.

STEPHEN S. SIMONS. [L. S.]
HENRY C. WHITTEN. [L. S.]
JAMES GOURLAY. [L. S.]
ALFRED L. GOURLAY. [L. S.]

I approve of the foregoing bond and the sureties therein.
Detroit, June 7, 1880.

JAMES O. CAMPBELL,
Associate Justice of the Supreme Court of Michigan.

I approve of the above bond and the sureties therein.
Lansing, June 22, 1880.

ISAAC MARSTON,
Chief Justice Sup. C't, Mich.

82 In the supreme court of the State of Michigan.

SALMON B. MATHEWS, PLAINTIFF IN ERROR,
vs.
THADDEUS DENSMORE, ELISHA P. GROW, & DEWITT GROW, defendants in error.

STATE OF MICHIGAN,
County of Wayne, ss:

On this seventh day of June, A. D. 1880, at the city of Detroit, in said county, personally appeared before me James Gourlay and Alfred L. Gourlay, who, being by me duly sworn, say that they are sureties named in the bond to Thaddeus Densmore, Elisha P. Grow, and Dewitt Grow, dated

the seventh day of June, A. D. 1880, which is in the penal sum of three thousand dollars, and to answer all costs and damages in case the plaintiff in error named in said bond shall fail to make good his plea, as mentioned in said bond, that said sureties executed said bond as such sureties. They further say that they are each possessed of property, real and personal, of the value of three thousand dollars and upward, subject to execution; that they are each worth the sum of three thousand dollars over and above all their indebtedness; and further deponents say not.

JAMES GOURLAY.
ALFRED L. GOURLAY.

Subscribed and sworn to before me this 7th day of June, A. D. 1880.

EPHRAIM K. ROBERTS,
Notary Public, Wayne County, Mich.

(Indorsed:) State of Michigan, supreme court. Salmon S. Mathews, pl'ff in error, vs. Thaddeus Densmore et al., def'd'ts in error. Affidavit of sufficiency of sureties. Filed June 9, '80. Ed. W. Lowe. J. C. Dickerson, att'y for pl'ff in error.

(Indorsed:) Supreme court of the United States. Salmon S. Mathews, pl'ff in error, vs. Thaddeus Densmore et al., d'f'd'ts in error. Bond. Filed June 15, '80. Ed. W. Lowe, dep. clerk.

83 In the Supreme Court of the United States.

SALMON S. MATHEWS, PL'FF IN ERROR,
vs.
THADDEUS DENSMORE, ELISHA P. GROW, AND Dewitt Grow, def'ts in error.
} Error to the supreme court of the State of Michigan.

Afterwards, to wit, on the first Monday of December, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Salmon S. Mathews, by Don M. Dickinson, his attorney, and says that in the record and proceedings in this cause there is manifest error, in this, to wit:

First. The supreme court of the State of Michigan erred in sustaining the ruling of the circuit judge in his refusal to admit in evidence the writ of attachment and proceeding thereunder in the United States circuit court for the eastern district of Michigan (Exhibit D), which is as follows:

In the circuit court of the United States for the eastern district of Michigan.

STEPHEN B. SIMONS, CORNELIUS P. HATCH, & Henry C. Whitten
vs.
FRANK GATES AND THOMAS MARLER.

Circuit court United States for the eastern district of Michigan, ss:

The President of the United States of America to the marshal of the eastern district of Michigan, greeting:

Whereas a suit has been commenced in the above entitled cause in said

court, by declaration in an action of assumpsit founded on an express and implied contract, which said suit is now pending and undetermined:

You are therefore commanded to attach so much of the lands, tenements, goods, chattels, moneys, and effects of Frank Gates and Thomas Marler, who are citizens of the State and residents of the eastern district of Michigan, the defendants in said suit, not exempt from execution, wheresoever the same may be found within said district, as will be sufficient to satisfy the demand of the said Stephen B. Simons, Cornelius P. Hatch, and Henry C. Whitten, plaintiffs in said suit, who are citizens of the State of Massachusetts, amounting, as is alleged, to the sum of five hundred dollars and upwards, over and above all legal set-offs, and safely keep the same to satisfy any judgment that may be recovered by the said plaintiffs in said suit against the said defendants. And have you then and there this writ, with return of your doings thereon, before the judge of said court, at the district court-room in the city of Detroit, on Tuesday, the 4th day of February, A. D. 1879.

84

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme court of the United States, this thirteenth day of January, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

[SEAL.] (Signed) ADDISON MANDELL, *Clerk.*

Endorsed with title of cause & by J. G. Dickinson, pl'ff's att'y.

EASTERN DISTRICT OF MICHIGAN, *ss:*

I do hereby certify and return that I executed the within writ of attachment, on the 16th day of January, A. D. 1879, by seizing, within the said district, the lands, tenements, goods, chattels, moneys, and effects of the defendants, designated and described in the inventory thereof, which is hereto annexed, and by making the said inventory, and by serving within said district a copy of such attachment and inventory, duly certified by me, upon Frank Gates, at Dansville, Michigan, in said district.

(Signed) S. S. MATHEWS,
United States Marshal.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

I, Addison Mandell, the clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true copy of the original appraisement, affidavit for writ, writ of attachment, and return of the marshal thereon endorsed, on file and of record in my office, in the cause therein entitled; that I have carefully compared the same with said original; and that it is a true copy thereof, and of the whole of said original.

85

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Detroit, in said district, on this 4th day of October, A. D. 1879.

[SEAL.] (Signed) ADDISON MANDELL, *Clerk,*
By JNO. GRAVES, *Dep'y Clerk.*

Inventory and appraisal of property seized by the U. S. marshal, under the above writ, at Dansville, Michigan, January 16th, 1879, signed by Levi Geer and Egbert Rice, appraisers, amounting in the aggregate to $819.94. (Describes goods same as those alleged in the declaration.)

In the circuit court of the United States for the eastern district of Michigan.

STEPHEN B. SIMONS, CORNELIUS P. HATCH & HENRY C. WHITTEN
vs.
FRANK GATES AND THOMAS MARLER.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

Julian G. Dickinson, being duly sworn, says that he is the attorney for the above-named Stephen B. Simons, Cornelius P. Hatch, and Henry C. Whitten, who comprise the firm of Simons, Hatch and Whitten, plaintiffs in the above-entitled cause. That said plaintiffs' action in the said cause is founded upon contract express and implied, and was commenced by declaration in said court, wherein judgment has not yet been recovered; that the said declaration in said cause has been personally served upon the said Frank Gates, who is now the only existing member of said firm, the said Marler having never acted as a member of the firm of
86 Gates & Marler, but having absconded and concealed himself ever since the purchase of the goods upon which this action is founded. And deponent further says that said defendants in the annexed writ in said cause are indebted to said plaintiffs in said writ in the sum of five hundred dollars over and above all legal set-offs, as near as this deponent can estimate the same, upon contract express and implied; that this deponent has good reason to believe that the said defendants fraudulently contracted the said debt respecting which the said suit is brought; that the said defendants have disposed of their property with intent to defraud their creditors. And further deponent saith not.

(Signed) JULIAN G. DICKINSON.

Sworn to and subscribed before me this 13th day of January, A. D. 1879.

(Signed) ADDISON MANDELL,
Com. Circuit Court U. S., E. D. of Michigan.

Second. The supreme court of the State of Michigan erred in sustaining the rulings of the circuit judge in refusing to admit evidence on the trial, offered by the plaintiff in error, in defense to the action of the defendants in error below, viz: 1st. The testimony of Frederick K. Walker, Exhibit E in the record. 2nd. The testimony of Charles W. Griswold, Exhibit F in the record. 3rd. The question to witness Egbert Rice, "Didn't Gates tell you there had been such a partnership formed?" 4th. The question to witness C. L. Randall: 1. "Will you state what you saw in regard to that partnership?" 2. "Will you state whether you saw Gates advertising this partnership of Gates & Marler?" 3. "Did you see him distributing handbills of the partnership?"

Third. The supreme court of the State of Michigan erred in sustaining the charge, as given to the jury below by the circuit judge,
87 as follows:

"If you are satisfied that the plaintiffs were rightfully in possession of the property on the 16th day of January, and that at that time the defendant took possession of the goods and removed them, your verdict ought to be for the plaintiffs."

Fourth. The supreme court of the State of Michigan erred in sustaining the refusal of the circuit judge to charge the jury according to the second request of the defendant's counsel, viz:

2. The jury is instructed to render a verdict for defendant.

Fifth. The supreme court of the State of Michigan erred in sustaining the refusal of the circuit judge to charge the jury according to the third request of the defendant's counsel, viz:

3. If the jury believe that Gates and Marler were in partnership—together in business—then they are instructed that such partnership must be deemed to continue until it is shown that such partnership came to an end. And there being no evidence that such partnership came to an end, the jury is instructed that the goods for which this suit is brought must be deemed to be the property of such partnership, and are not covered by the descriptive words of the mortgages introduced in evidence, and plaintiffs cannot recover.

Sixth. The supreme court of the State of Michigan erred in affirming the judgment of the court below, to wit, the circuit court for the county of Eaton, in said cause.

Seventh. The supreme court of the State of Michigan erred in refusing to reverse the said judgment of the said circuit court according to the prayer of the plaintiff in error in said cause.

And the said Salmon S. Mathews prays that the judgment aforesaid may be reversed, annulled, and altogether held for nought, and that he may be restored to all things which he hath lost by occasion of
88 the said judgment.

DON M. DICKINSON,
Attorney for Plaintiff in Error.

(Indorsed:) In the Supreme Court of the United States. Salmon S. Mathews, pl'ff in error, vs. Thaddeus Densmore et al., def'ts in error. Assignment of errors. Don W. Dickinson, att'y for pl'ff in error.

(Also indorsed:) Supreme Court U. S. 1881, October term. No. 599. Salmon S. Mathews, pl'ff in error, vs. Thaddeus Densmore et al. Assignment of errors. Filed 12th Dec'r, 1881.

(Stamp:) Office Supreme Court U. S. Filed Dec. 12, 1881. James H. McKenney, clerk.

(Indorsement on cover:) No. 303. Salmon S. Mathews, plaintiff in error, vs. Thaddeus Densmore, Elisha P. Grow, and Dewitt Grow. Michigan supreme court. Filed 5th October, 1880.